

S.B. Civil Misc. Appeal No. 35/2007
(Nemi Chand Sharma Vs. Shriram Kumar & ors.)

Date of Order :: 9th January 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. S.K.Sankhla for the appellant.

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Having heard learned counsel for the claimant-appellant and having perused the award impugned, this Court is satisfied that the award of compensation as made by the Tribunal in the sum of Rs.3,72,600/- together with interest at the rate of 7.5% per annum remains that of just compensation admissible in this case for the loss suffered by the claimant-appellant due to the injuries sustained in vehicular accident; and there appears no scope for enhancement.

From the facts as noticed by the Tribunal in the impugned award, it appears that the appellant Nemichand, about 42 years of age while working as driver with Rajasthan State Road Transport Corporation and taking a bus bearing registration No. RJ 24 P 1224 from Jodhpur to Abu Road on 06.05.2002 suffered injuries when the bus was hit on National Highway No.14 on Sheoganj to Sirohi road near Ambeshwar Temple by on-coming truck bearing registration No. HR 46 A 8337. The claimant-appellant made the claim for compensation against the driver, owner and insurer of the

truck in question and for quantification of compensation submitted that he was working as driver with RSRTC earning salary of Rs.5,500/- apart from overtime; that due to the accident he suffered grievous injuries on his right leg and hip apart from other simple injuries; that he was taken to the hospital at Sirohi and was referred to Mahatma Gandhi Hospital, Jodhpur where he remained indoor patient from 07.05.2002 to 11.07.2002 and was operated upon and then was referred to Ahmedabad where he remained hospitalised at Alok Hospital from 12.07.2002 to 29.07.2002 and his right hip was transplanted and he was required to undergo physiotherapy; that artificial hip has life of 15 years and then the same would be required to be substituted; that for three months of hospitalisation Ram Niwas, Champalal and Kamal Kishore served him and were paid Rs.42,000/-; that he was under regular pains and sufferings and could not squat and carry out his daily routine as before; that he was unable to drive; and that he incurred expenditure on transportation, treatment, special diet and attendants. The Tribunal noticed the statement of PW-2 Dr.Mahesh Bhati who had issued certificate Ex.13 on 02.05.2003 upon examination of the body of the claimant certifying his permanent disablement at 53.3% and those of the attendants PW-3 Champalal, PW-4 Ram Niwas and PW-5 Kamal Kishore.

After considering the material available on record, the Tribunal observed that the claimant has sustained grievous and simple injuries and has suffered permanent disablement and being in the age group of 40-45 years, would be entitled to compensation on a multiplier of 15. The Tribunal referred to the salary certificate Ex.66 showing monthly salary of the victim at Rs.5,727/- after deductions. But then, the Tribunal observed that the claimant suffered fracture of right femur bone and dislocation of right side hip and had received treatment therefor; that the claimant was continuing in service on the same post and was earning same income and has not suffered any loss of income; and that though the claimant received treatment at Ahmedabad, his treating doctors did not issue any disablement certificate and the certificate Ex.13 was issued not by the Medical Board of Mahatma Gandhi Hospital, Jodhpur but under the signature of one Medical Officer. In the overall circumstances of the case, the Tribunal considered it appropriate to take permanent disablement of the claimant at 20% and in this manner assessed loss due to the permanent disablement at Rs.1,98,000/-. The Tribunal also allowed Rs.18,000/- towards simple and grievous injuries; Rs.24,600/- for 82 days' hospitalisation at Rs.300/- per day; Rs.1,00,000/- towards treatment and related expenditure with reference to the bills for Rs. 96,312/-, Ex.14 to Ex.52; Rs.12,000/- towards

transportation with reference to the bills for Rs.11,849/-, Ex.53 to Ex.57; Rs.15,000/- for attendants; and Rs.5,000/- towards special diets. The Tribunal has, therefore, made award in the sum of Rs.3,72,600/- in favour of the claimant and has also allowed interest at the rate of 7.5% per annum from the date of filing of claim application after adjustment of Rs.25,000/- received under No Fault Liability.

The amount of compensation so awarded by the Tribunal, on the facts and in the circumstances of the present case, cannot be said to be too low or inadequate. Though the claimant has shown to have suffered fracture of right femur and dislocation of right hip but noticeable it is that the Tribunal has found that the claimant has not suffered any loss of earning and he was continuing in service on the same post and salary. There being no loss of earning, the amount of Rs.1,98,000/- as awarded by the Tribunal with reference to the permanent partial disablement could only be referred to non-pecuniary loss. For the kind of injuries suffered by the claimant and the treatment undergone, the Tribunal cannot be faulted in not accepting the assertion of over 53% disablement with reference to the certificate Ex.13 that has not been issued by his treating doctor or by the Medical Board. With reference to the injury, the estimate of disablement as put by the Tribunal at 20% cannot be said to be grossly inappropriate.

The Tribunal has further allowed compensation on all the relevant heads rather liberally. The rate of interest at 7.5% per annum in the award made in the month of September 2006 also stands on higher side. In the ultimate analysis, the award remains that of just compensation ruling out any scope for enhancement.

The appeal fails and is, therefore, dismissed summarily.

[DINESH MAHESHWARI], J.

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